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In the Supreme Court of the United States

OCTOBER TERM, 1959

SEABOARD MACHINERY CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (R. 119;[1] Pet. App. 1a) is reported at 156 F. Supp. 40. The opinion of the court of appeals (R. 139; Pet. App. 6a) is reported at 270 F. 2d 817.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 1959. A timely motion for rehearing was denied on November 25, 1959. The petition for a writ of certiorari was filed on February 23, 1960.

[1] All record references are to the pages of the "Transcript of Record" printed for the use of the court of appeals and filed in this Court.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court below erred in holding that a contract leasing property of the United States to petitioner imposed upon the petitioner absolute liability for the loss of the property.

2. Whether a bailee, who receives insurance proceeds attributable to the loss of the bailed property, must remit to the bailor that portion of the insurance proceeds which is in excess of his own insurable interest.

STATEMENT

On December 14, 1951, petitioner and the United States (acting through the Maritime Administration) entered into a contract whereby certain equipment to be used in the making of hatch covers was leased by the United States to petitioner (R. 93–94). With respect to petitioner's liability for damage to or loss of the equipment, the contract provided (R. 97):

> 9. The Hirer covenants and agrees to use the said machines in a careful and prudent manner during the term hereof, to keep and maintain the same in good state of condition and repair, to replace and/or repair any and all damage thereto to the extent that upon the termination of this lease all of said machines shall be returned to the owner in as good condition as when the Hirer received the same saving only ordinary wear and tear, that is, deterioration resulting from normal use.

On December 22, 1952, the leased equipment was destroyed by a fire at the Wainwright Shipyard at

Panama City (R. 119). The fire and consequent losses were not attributable to any negligence on the part of petitioner (R. 121).

On August 25, 1953, petitioner filed in the United States District Court for the Northern District of Florida a complaint against the Fireman's Fund Insurance Company seeking recovery of $193,374.80 on the basis of three insurance policies in which it was the named insured (R. 2–5, 119). One of these policies (No. SFP 33799) covered and specifically described the equipment owned by the United States and leased to petitioner on December 14, 1951 (R. 18, 54, 82, 102). This policy had a face value of $68,374.80, that amount apparently representing 90% of the government's acquisition cost with respect to the equipment (R. 14, 18, 102).[2]

After the insurance company had filed an answer, the United States intervened, asserting its interest in the lawsuit (R. 35–36). Shortly thereafter, petitioner and the insurance company agreed to a settlement, under the terms of which petitioner was to receive $150,000 on all three policies (Pet. App. 7a). Since the destruction of the government's leased equipment was determined to be to the extent of $67,488.30, that amount of the total settlement was placed in escrow by the insurer under Policy No. SFP 33799 to await final disposition of the lawsuit (R. 37–39). The petitioner's suit against the insurance

[2] For example, one of the items leased on December 14, 1951, to petitioner was "Item 0008, Aurora Wright 24" Floor Type Drill Press (R. 102). Its acquisition cost was $790 (R. 102). It was described in the policy and insured for $711, or for 90% of the acquisition cost (R. 18).

company was then dismissed with prejudice, leaving the litigation pending between petitioner and the United States (R. 51).

On July 14, 1954, the United States filed a complaint by which it sought (a) a judgment against petitioner for the full value of the equipment which had been destroyed,[3] and (b) an order that the insurance funds held in escrow be paid to the Treasurer of the United States (R. 42–44). The United States urged that the petitioner was liable for the destruction of the equipment on the ground that Section 9 of the lease contract (*supra*, p. 2) made petitioner an insurer of the goods. It was also contended that, even if the contract did not impose absolute liability, the government was entitled to the insurance proceeds on the theory that, where insurance is obtained by a bailee on a bailor's property, the proceeds of such insurance, to the extent that they exceed the bailee's own loss, must be applied for the benefit of the bailor.

The petitioner denied liability, arguing that the lease contract was merely declarative of the general law which makes a bailee responsible for the loss of bailed property only where the loss has been a result of his negligence. It contended that it was not liable to the United States, either by contract or by law, for the destruction of the equipment, and that it was therefore entitled to retain the insurance proceeds.

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[3] While the *ad damnum* of the complaint was $181,210.00, the United States conceded during the proceeding that the market value of the equipment at the time of the fire was $69,073.64 and that the $67,488.30 in insurance proceeds held in escrow was therefore an acceptable recovery.

The district court, accepting petitioner's contentions, granted its motion for summary judgment (R. 119–124; Pet. App. 1a–5a). On appeal by the United States, the Court of Appeals for the Fifth Circuit reversed the judgment of the district court, and remanded the cause for the entry of judgment in favor of the United States for the amount of the insurance funds held in escrow (Pet. App. 6a–12a). The court held that Section 9 of the lease contract imposed upon petitioner an absolute liability for loss or destruction of the leased property.[1] It stated further that "[petitioner] * * *, having an insurable interest, could, as it did, protect itself completely against loss * * * by taking insurance to the full value of the rented equipment. It is only required now to pay over to the government the proceeds of such insurance" (Pet. App. 12a). On November 25, 1959, a petition for rehearing was denied (Pet. App. 13a).

ARGUMENT

Petitioner asserts that the decision below is erroneous under the established law of bailments, and that the decision therefore "unsettles an area of the law that has been universally settled for many decades" (Pet. 7). As the opinion of the court of appeals clearly shows, however, that court's decision was expressly based on the particular language employed in

[1] Since the court of appeals ruled that the petitioner was liable for the loss of the property by virtue of the lease contract, it found it unnecessary to consider the government's alternative contention that, even aside from the contract, the government, as owner of the destroyed property, was the party properly entitled to recover the insurance proceeds (Pet. App. 8a–9a).

the bailment contract. Thus, petitioner's argument, far from involving any issue of far-reaching importance, comes down to the contention that the language used in the government lease contract involved here was misconstrued by the court below. This contention, even if sound, would not warrant review by this Court.

In any event, the Fifth Circuit's interpretation of the contract as imposing absolute liability on petitioner for the destruction of the leased property is wholly correct. In addition, the result below awarding the United States the recovery sought finds full and independent support in the established rule of law, based on public policy, which requires a bailee to remit to the bailor any insurance proceeds which he receives in excess of his own insurable interest.

1. Contrary to petitioner's assertion (Pet. 8), the court below did not declare a rule making the standard of construction applicable with respect to contracts between the United States and its citizens different from that applied to contracts involving only private citizens. It merely noted the undisputed principle that, where Congress has not otherwise provided, the construction of government contracts is governed by federal law, rather than by the law of any particular state[5] (Pet. App. 10a). *Priebe & Sons, Inc.* v. *United States*, 332 U.S. 407, 411; see also *United States* v. *Allegheny County*, 322 U.S. 174, 183; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 367.

[5] Indeed, petitioner did not urge a rule of law derived from any particular jurisdiction (Pet. App. 10a).

The basic rules of law applicable to the bailment relationship have been clearly set out in the federal decisions. Thus, it is established that ordinarily a bailee is liable only for losses attributable to his negligence, and that a mere promise to return the bailed property will not enlarge this liability. *Sturm* v. *Boker*, 150 U.S. 312, 331; *Reconstruction Finance Corp.* v. *Peterson Bros.*, 160 F. 2d 124, 126 (C.A. 5); *Mulvaney* v. *King Paint Mfg. Co.*, 256 Fed. 612, 615 (C.A. 2). It is equally well settled, however, that the parties to a bailment contract may, by a sufficiently clear manifestation of intent, impose upon the bailee absolute liability for loss or destruction of the property—thereby shifting the risk of unavoidable loss from the bailor to the bailee. This Court has itself declared (*Sun Printing and Publishing Ass'n* v. *Moore*, 183 U.S. 642, 654):

> But it is equally true that where by a contract of bailment the hirer has either expressly or by fair implication assumed the absolute obligation to return, even although the thing hired has been lost or destroyed without his fault, the contract embracing such liability is controlling and must be enforced according to its terms.

See also *Sturm* v. *Boker, supra; Rice Oil Co.* v. *Atlas Assur. Co.*, 102 F. 2d 561, 574 (C.A. 9); *Dryden* v. *Michigan State Industries*, 66 F. 2d 950, 953 (C.A. 8).

The opinion of the court below clearly shows that it fully applied the above principles, thus agreeing with every federal court which has passed on the

question.[6] Petitioner's complaint is, in effect, solely with respect to the particular conclusion of the court below that this petitioner had undertaken absolute liability in its contract with the government. The interpretation of the particular contractual language is, we submit, not an issue which merits review by this Court.

2. The decision below is plainly correct. Section 9 of the lease contract between petitioner and the United States is a clear manifestation of the intent of both parties that petitioner was to bear the full risk of loss on the equipment during the period of the lease. This provision begins: "The Hirer covenants and agrees to use the said machines in a careful and prudent manner during the term hereof, to keep and maintain the same in good state of condition and repair * * *." Obviously, this part of the paragraph did no more than state the common-law responsibility of a bailee for hire to exercise due care with respect to the hired property. If it had been the intention of the parties that this was the limit of petitioner's responsibility, they would have stopped there. In-

[6] There is accordingly no conflict in the federal decisions. The cases cited by petitioner merely indicate that the federal courts have interpreted other contracts, employing language substantially different from that at issue here, as not imposing the risk of absolute liability on the bailee.

The only phrasing which the contract here has in common with the contracts in the cases relied on by petitioner is that providing for the return of the bailed property in the same condition as when received, ordinary wear and tear excepted. Yet, the court below emphasized that the contract in the instant case had not merely this provision, but additional language obligating the bailee "to replace and/or repair any and all damage" to the property (Pet. App. 9a).

stead, making plain their intent to expand petitioner's liability beyond the common-law liability for negligence, the parties further stipulated that petitioner was required "to replace and/or repair any and all damage" to property. This additional language plainly imposes absolute liability. It imposes the duty to "replace and/or repair" without regard for how the damage occurred, that is, regardless whether the equipment was destroyed without fault on the part of petitioner. No other reading of the provision makes sense or gives effect to all of the contractual language. See, *e.g.*, *Basler* v. *Warren*, 159 F. 2d 41, 43 (C.A. 10); *Meighan* v. *Finn*, 146 F. 2d 594, 595 (C.A. 2), affirmed, 325 U.S. 300.[7]

Moreover, the decision below, contrary to petitioner's contention (Pet. 6, 9, 12–15), is fully supported by this Court's decision in *Sun Printing and Publishing Ass'n* v. *Moore*, 183 U.S. 642. There, this Court based its decision that the hirer of a vessel had undertaken absolute liability for the vessel primarily on a contractual provision stipulating that the hirer should "be liable and responsible for any and all loss and damage * * *." *Id.* at 655–656. The similarity between this language and that employed here ("to replace and/or repair any and all damage") is striking, and, we believe, dispositive.

Petitioner also contends (Pet. 14–15) that, by awarding the government the insurance proceeds

[7] This view is supported by petitioner's own conduct in taking out fire insurance protection against the very non-negligent loss involved here. As noted by the court below, petitioner is "only required now to pay over to the government [i.e the owner of the equipment] the proceeds of such insurance" (Pet. App. 12a).

placed in escrow, the court of appeals deprived petitioner of its property without due process of law. But, as the court below held, the government was entitled to recover from petitioner an amount equivalent to the value of the property destroyed. Since the amount placed in escrow was substantially equivalent to the market value of the property at the time of the fire (see *supra*, p. 4, note 3), the government's recovery of those funds could not, in any way, have prejudiced the petitioner.[8] Furthermore, the escrow agreement, itself, to which petitioner was a party, recognized the right of the United States to recover the escrowed funds in the event that this litigation should end in its favor (R. 38). And finally, as we show below, the government had an independent right to the insurance proceeds even aside from petitioner's contractual liability to it.

3. The decision below is sustainable on an additional ground. Even if the lease contract did not make petitioner absolutely liable for the loss of the leased equipment, the United States, as owner of the equipment, is nevertheless the party properly entitled to recover the insurance proceeds. The applicable rule of law was stated by this Court in the leading case of *Home Insurance Co.* v. *Baltimore Warehouse Co.*, 93 U.S. 527, 543:

[8] Thus, the fact that petitioner's accountants—in an assertion unsupported by any record reference or other factual foundation—determined its recovery from the insurance company under the policy covering the equipment in question to be only $12,000 (Pet. 15) of the total settlement is wholly irrelevant to the rights of the United States against the petitioner.

> * * * It is undoubtedly the law that wharfingers, warehousemen, and commission-merchants, having goods in their possession, may insure them in their own names, and in case of loss may recover the full amount of insurance, for the satisfaction of their own claims first, and *hold the residue for the owners.* [Emphasis added.]

See also *California Ins. Co.* v. *Union Compress Co.*, 133 U.S. 387, 409; *American Eagle Fire Ins. Co.* v. *Gayle*, 108 F. 2d 116, 119 (C.A. 6), certiorari denied, 309 U.S. 686. Such a doctrine is necessary to prevent a bailee, like the petitioner here, from enriching himself from insurance proceeds which are in excess of his own insurable interest while leaving the owner of the property uncompensated for his loss.

In the present case, petitioner failed to establish, or even suggest, that the destruction of the leased property inflicted any loss on it.* The loss, of course, was the government's because it was government-owned property that was destroyed. Thus, the decision of the court below merely awarded the United States the insurance proceeds attributable to the destruction of its own property.

*The insurance policy did not cover a loss of profits.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.[10]

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[10] This Court has recently denied petition filed by the same petitioner involving claim under a different policy to fire insurance proceeds covering government-owned property. *United States* v. *Seaboard Machinery Corp.*, 256 F. 2d 166 (C.A. 5), certiorari denied, 358 U.S. 932.

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